

LAW OFFICE OF
DAVID J. WEINSOFF
138 Ridgeway Avenue
Fairfax, California 94930
tel. 415-460-9760
david@weinsofflaw.com

Via Certified Mailing – Return Receipt

November 10, 2020

Lesley Keffer Russell, General Manager
Managing Agent
Saint Helena Winery
100 Pratt Avenue
St. Helena, CA 94574

Jeffrey E. Fetters, CEO
York Creek, LLC
121 E. Park Square
Owatonna, MN 55060-3046

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Ms. Russell, Mr. Fetters, and Managing Agent:

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, (“CWA” or “the Act”) that River Watch believes are occurring at Saint Helena Winery (“Winery”) located at 100 Pratt Avenue in Saint Helena, California. Notice is being sent to you as the responsible owners, operators, and managers of the Winery and real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Winery indirectly into the Napa River and York Creek, navigable waters of the United States impaired under CWA § 303(d) for nutrients, pathogens, sedimentation/siltation.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge complies with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a

general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p). CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES permitting program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and comply with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under CWA § 505(a). Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Winery. Consequently, Saint Helena Winery and York Creek, LLC are placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Winery for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with applicable water quality standards set forth in the California Toxics Rule (“CTR”) and the San Francisco Bay Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

- 1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.**

To comply with this requirement, River Watch notices the Winery of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001 (the General Permit) relating to services and operations taking place at the Winery.

The Winery, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent (“NOI”) agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on or about August 20, 2015 and the Winery is assigned Waste Discharge Identification (“WDID”) number 2 28I025989. River Watch, on the basis of eye-witness reports, records publicly available, and/or records in the possession and control of the Winery, contends that in the continuing industrial operations taking place at the Winery, the

Winery has failed to comply, from Annual Reporting Year 2015-2016 to the present, with the strict terms and conditions of the General Permit.

In addition to the alleged violations of the terms and conditions of the General Permit, River Watch alleges violations of the provisions of discharge prohibitions contained in the RWQCB's Basin Plan, which are incorporated by reference as part of the compliance obligations imposed on the Winery under the General Permit (General Permit Section I.C.29).

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the General Permit is not a mere statutory and regulatory exercise. The lands in and surrounding the Napa County Watershed produce a harvest of unparalleled bounty drawing acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Napa County landowners.

The Winery's "operations," detailed in its Storm Water Pollution Prevention Plan ("SWPPP") dated August, 2016 (with amendments), Section 2.1.2 ("*Facility Operations*"), "consist of the various processes for wine making, which includes material/grapes receiving, storage, pressing, grape/wine processing, bottling, and shipping, and all the activities associated therein."

The Winery is classified on its NOI as SIC Code 2084 ("Wines, Brandy, and Brandy Spirits"). Industrial operations at the Winery are conducted both indoors and outdoors, where they are subject to rain events. Because there is no public record of a SWRCB or RWQCB exemption from the collecting and analyzing of the range of pollutants discharged from the Winery site, without implementing and properly reporting the full range of required sampling and analysis there is no accurate measure by which to determine whether required Best Management Practices ("BMPs") under General Permit Section X are both implemented at the Winery and effective to ensure there are no unlawful discharge(s) of the pollutants from the Winery to the Napa River and York Creek – waters of the United States.

Having agreed to its terms, the Winery has a continuing burden to demonstrate compliance with every applicable provision of the General Permit. River Watch alleges the following actions and inactions as violations of the General Permit:

a. Failure to Properly Sample and Monitor Storm Water Discharges

Under the General Permit, the Winery is required to comply with all of the terms of the General Permit including, but not limited to, the following:

- "Collect and analyze storm water samples from two (2) QSEs [Qualifying Storm Events] within the first half of each reporting year (July 1 to December 31) and two (2) QSEs within the second half of the reporting year (January 1 to June 30)" (General Permit Section XI.B.3 and SWPPP Section 5.6.1 ("*Sampling Schedule*")).

River Watch, following review of the SWRCB's SMARTS reporting database, contends the

Notice of Violations Under CWA – Page 3

Winery failed to comply with this requirement by sampling for none (0) of the required four QSEs during the 2015-2016, only two (2) in the 2016-2017 and 2017-2018 Annual Reporting Years, and only three (3) in the 2018-2019 Annual Reporting Year. River Watch bases this allegation on its review of the documents recorded on the SMARTS database as of the filing of this Notice.¹

- Analyzing all collected samples for the following parameters: “(a) Total suspended solids (TSS) and oil and grease (O&G); (b) pH ...; (c) Additional parameters identified [by the Winery] on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment ...; [and] Additional applicable parameters related to receiving waters with 303(d) listed impairments ...” (General Permit Section XI.B.6.a.-c, e.).

River Watch, following review of the Annual Reports and laboratory test results of the storm water samples reported by the Winery on the SWRCB’s SMARTS reporting database, alleges the Winery fails to sample and monitor for the full range of pollutants required by the General Permit. In addition to Oil and Grease, Total Suspended Solids, pH, as well as COD, which the Winery included in its under-sampling and monitoring discussed above, the Winery is required to sample

¹ The “explanation” for failing to fully sample in the 2015-2016, 2016-2017, 2017-2018, and 2018-2019 Annual Report’s “Summary of Explanations” were:

- 2018-2019 - for Question 3 the Winery stated that “only one sample was collected and tested during July 1, 2019 – Dec 31, 2019 based on insufficient qualifying storm events creating insufficient discharge for collection,” an “explanation” that River Watch alleges is incorrect.
- 2017-2018 – for Question 3 the Winery stated that “no QSEs occurred during the first 6 months ...,” an “explanation that River Watch alleges is incorrect.
- 2016-2017 – for Question 3 the Winery stated that “only one QSE was sampled during 2016. Other QSEs were not sampled for various reasons including lack of personal [sic] available at sampling time and accessibility. These deficiencies will be resolved for 2017-2018 reporting period; for Question 9 the Winery stated that “only one QSE was sampled during 2016. Other QSEs were not sampled for various reasons including lack of samplers on site during sample collection time period and accessibility. These deficiencies will be resolved during the 2017-2018 Reporting Period;” and for Question 12 the Winery stated “however, inspection records for missing sampled QSEs may be deficient and will be resolved during the 2017-2018 Reporting Period” - a set of “explanations” that River Watch alleges are incorrect and violations of the General Permit.
- 2015-2016 – for Question 2 the Winery stated “no samples were collected from QSEs from the industrial area. After April and May 2016 ToR training, the sampling requirements were clarified regarding sampling protocol. Also, the active industrial area is generally viewed as not influencing runoff to vicinity waterbodies, predominantly due to the remote location, limited size of area, and lack of hydraulic connectivity to offsite discharges;” for Question 3 the Winery stated “no QSEs were sampled because of lack of clarity of sampling protocol given the apparent zero-discharge situation from the limited and internal industrial active area. A revised SWPPP with revised MIP will have a unique sampling protocol designated, despite the typical zero discharge situation during storms;” for Question 9 the Winery stated “no QSEs were sampled because of initial misunderstandings or implementing the MIP and sampling protocol. Training by ToRs in April and May 2016 clarified some of the sampling requirements but also recognized a very unique circumstance of limited and internal industrial area that is generally under a zero-discharge situation. A revised July 2016 SWPPP will provide a MIP with a unique sampling protocol to meet IGP requirements;” and for Question 12 the Winery stated “however, because some of the initial misunderstandings and later [sic] clarification training by ToRs in April and May 2016, new forms were used. And, some forms were completed, post-date, based on other recorded notes and observations throughout the year” – set of “explanations” that River Watch alleges are incorrect and violations of the General Permit.

and monitor for “additional parameters identified by the Winery on a facility-specific basis that serve as indicators of the presence of industrial pollutants identified in the pollutant source assessment ...” (General Permit Section XI.B.6.c). In its SWPPP, the Winery provides such a comprehensive list of “*Potential Pollutant Sources*” (see SWPPP Table 2.1) but fails to sample for hydrocarbons, metals, hydraulic fluid, and nutrients. This potential pollutant list is so significant, and as the SWPPP is more than 4 years old, that River Watch concludes a “reasonable potential analysis” should be conducted by the Winery to determine with accuracy what pollutants are actually on-site, used in industrial operations, and require sampling and monitoring. Revisions to the list require an amendment to the SWPPP. Compliance with this requirement would ensure the Winery satisfies the requirement of Question 7 on the Annual Reporting form which states clearly that “permitted facilities located within an impaired watershed must assess for potential pollutants that may be present in the facility’s industrial storm water discharge. Parallel with this sampling requirement, River Watch alleges the Winery (as noted in its Annual Reports) has “Nutrients” (nitrate, nitrite, total nitrogen, temperature, and total phosphorus) “Present at Facility,” but fails to sample for them.

In addition to all of the above, the General Permit provides in Section III.C. “Discharge Prohibitions” that “[i]ndustrial storm water discharges and authorized NSWDS that contain pollutants that cause or threaten to cause pollution, *contamination, or nuisance as defined in section 13050 of the Water Code, are prohibited*” (emphasis added). Water Code § 13050 provides, in relevant part:

(e) “Waters of the state” means any surface water or groundwater, including saline waters, within the boundaries of the state.

(k) “Contamination” means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. “Contamination” includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

(l) (1) “Pollution” means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The waters for beneficial uses.

(B) Facilities which serve these beneficial uses.

(2) “Pollution” may include “contamination.”

(m) “Nuisance” means anything which meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during, or as a result of, the treatment or disposal of wastes.”

River Watch alleges that the discharge of the pollutants copper and zinc from industrial sources, such as on-site materials containing zinc or copper and transportation-related activities at the

Winery, are above CTR limits and therefore prohibited as “contamination” or “nuisance” under the General Permit. River Watch believes that targeted monitoring/sampling is required at the Winery site to determine whether, and if so to what extent, zinc and copper are being discharged from the Winery indirectly to the Napa River. The General Permit provides no blanket exclusion for on-site vehicle use. The General Permit, Appendix 2 (“Instructions For No Exposure Certification (NEC)”) mirrors text from the EPA’s “Guidance Manual for Conditional Exclusion from Storm Water Permitting Based on ‘No Exposure’ of Industrial Activities to Storm Water” (EPA 833-B-00-001, June 2000) to provide that “Adequately maintained vehicles” are among the list of “Industrial Materials/Activities Not Requiring a Storm-Resistant Shelter” (see Appendix 2.B.4.d.). In the absence of any sampling for zinc or copper at the Winery, however, it is not possible to determine whether the considerable number of vehicles, both owned/operated and maintained by the Winery, as well as those driven separately by private vendors involved in industrial activities at the site, are “adequately maintained.”

b. Failure to Monitor Discharges from Wastewater Ponds

The Winery’s SWPPP identifies the use and operation of “a lined holding pond that stores water for irrigation and frost control. The holding pond is in proximity to the confluence of York Creek and the Napa River, but is an agricultural activity not tied to the industrial activity.” (see SWPPP Section 2.1.4 “*Description of Drainage Areas and Existing Drainage*”). River Watch is concerned, depending on the material used as “lining” for the holding pond, of discharges to York Creek and the Napa River.

c. Failure to Comply with Receiving Water Limitations and Discharge Prohibitions

The General Permit requires dischargers to ensure that industrial storm water discharges and authorized NSWDS do not: (a) cause or contribute to an exceedance of any applicable water quality standards in the Napa River including its tributaries (General Permit Section I.E.37, VI.A.), (b) adversely affect human health or the environment (General Permit Section VI.B.) and, (c) do not contain pollutants in quantities that threaten to cause pollution or a public nuisance (General Permit Section III.C., VI.C.). The Winery provides no evidence of complete compliance with these requirements for the Winery’s transportation-related areas.

d. Failure to Comply with Total Maximum Daily Loads (TMDLs) Requirements

The Napa River and its tributaries are listed under CWA § 303(d) as impaired for nutrients, pathogens, and sedimentation/siltation. When the Winery applied for NOI coverage under the General Permit, it was required to submit data and/or information, prepared by a Qualified Industrial Storm Water Practitioner demonstrating that the Winery: (1) eliminated all exposure to storm water of the pollutants for which the water body is impaired, has documented the procedures taken to prevent exposure onsite, and has retained such documentation with the SWPPP at the Winery, (2) the pollutant for which the water body is impaired is not present at the Winery, or (3) the discharge of any listed pollutant will not cause or contribute to an exceedance of a water quality standard (General Permit Section VII.B.). River Watch could find no documentation demonstrating compliance with these requirements.

e. Failure to Prepare and Implement an Adequate SWPPP

The SWPPP for the Winery fails to include a sufficient narrative assessment of all areas of industrial activity with potential industrial pollutant sources: (i) likely to be present in industrial storm water discharges and authorized NSWDS, (ii) the degree to which the pollutants associated with those materials may be exposed to, and mobilized by contact with, storm water, and (iii) the identification of the industrial pollutants related to the receiving waters with CWA § 303(d) listed impairments or approved TMDLs that may be causing or contributing to an exceedance of a water quality standard in the receiving waters (General Permit Section X.G.2.i, iv, and ix). Although the Winery has identified certain facility-specific activities at the Winery known to create pollution, it fails to identify additional parameters associated with these facility-specific industrial pollutants. For example, the Winery identifies transportation activities taking place at the Winery but fails to test for copper or zinc which are known pollutants from tires, brake pads, fuels and lubricants. The Winery has also failed to identify or test for these transportation-related pollutants in the parking lots, vehicle storage area(s), or other transportation surfaces at the Winery.

3. The Person or Persons Responsible for the Alleged Violation.

The entities responsible for the alleged violations are Saint Helena Winery and York Creek, LLC as owners and operators of the Winery.

4. The Location of the Alleged Violation.

The location of the various violations is the permanent address of the Winery at 100 Pratt Avenue in Saint Helena, California, including the waters of the Napa River and York Creek – both waters of the United States.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is from November 10, 2015 to the present. This Notice includes all violations which occur after the range of dates covered by this Notice up to the end of trial. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface water and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

REMEDIAL MEASURES REQUESTED

River Watch believes that at a minimum, implementing the requirements of the General Permit as outlined in this Notice is necessary in order to bring the Winery into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment.

CONCLUSION

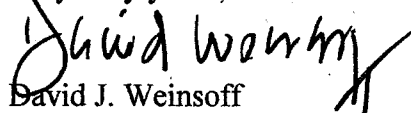
The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Winery's alleged violations of the CWA as set forth in this Notice.

The General Permit, in the very first "Standard Condition," states that "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage" (General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certifies that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (General Permit Section XXI.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$55,800.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages the Winery to contact counsel for River Watch within **20 days** after receipt of this Notice to continue on-going discussions regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Winery is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,


David J. Weinsoff

DW: lm

Service List

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

John W. Busterud, Regional Administrator
U.S. Environmental Protection Agency
Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Jeffrey E. Feters, CEO
Federated Insurance
121 E. Park Square
Owatonna, MN 55060-3046

York Creek, LLC
c/o Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811